



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

MAY - 7 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hugo Hodge, Jr., Executive Director  
Virgin Islands Water and Power Authority  
P.O. Box 1450  
St. Thomas, USVI 00804-1450

**Re: Notice of Violation, EPA Index No. CAA-02-2014-1303**

Dear Mr. Hodge:

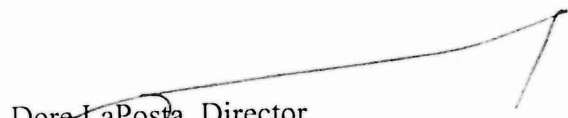
Pursuant to the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, 42 U.S.C. § 7413(a)(1), Section 113(a)(1) of the CAA, the United States Environmental Protection Agency (EPA) issues the enclosed Notice of Violation (NOV) to the Virgin Islands Water and Power Authority (VIWAPA) for violations at the Krum Bay Generating Facility (St. Thomas Facility) located in St. Thomas, U.S. Virgin Islands.

In the NOV, EPA finds violations of the opacity limit set forth in the Virgin Islands Laws and Rules and Regulations on Air Pollution Control (VI-APCR&R) Title 12, Chapter 9, Section 204-22(a) and (b) (VI SIP Opacity Rule). EPA also finds violations of the sulfuric acid mist, particulate matter (PM 10), and volatile organic compound (VOC) emission limits in the St. Thomas Consolidated Prevention of Significant Deterioration (PSD) permit issued pursuant to the federal PSD regulations, 40 C.F.R. § 52.21, which were incorporated by reference into the applicable Virgin Islands implementation plan.

As noted in the NOV, notification of violations of the Title V Operating Permit is not required pursuant to § 113(a)(1) of the CAA. However, since the PM 10 and VOC emission limits in the St. Thomas Consolidated PSD Permit and the VI SIP Opacity Rule are included as applicable requirements in the Facility's Title V Operating Permit, violations of those limits are also violations of the Title V Operating Permit, Title V of the CAA, and the Virgin Island Title V Operating Permit Program.

As indicated in the NOV, if you wish to request a conference with EPA to discuss the NOV, you must do so in writing within thirty (30) calendar days of receipt of the NOV. If you have any questions, or would like to schedule the conference provided for in the NOV, please contact Denise Leong, Assistant Regional Counsel, at (212) 637-3214.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2

Enclosure

cc: Magdalene Morancie, Acting Director  
Division of Environmental Protection  
Virgin Island Department of Planning and Natural Resources

Legal Counsel  
Division of Environmental Protection  
Virgin Island Department of Planning and Natural Resources

Robert G. Smith, Esq.  
Robert G Smith Law  
20 Halston Court, Suite 200  
Baltimore, MD 21209

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

IN THE MATTER OF:

Virgin Islands Water And Power Authority,  
St. Thomas, U.S. Virgin Islands

RESPONDENT

**Notice of Violation**

**CAA-02-2014-1303**

**STATUTORY AUTHORITY**

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement and Compliance Assistance (Director) issues this **Notice of Violation (NOV)** to the Virgin Islands Water and Power Authority (Respondent or VIWAPA) for violations at the Krum Bay Generating Facility (St. Thomas Facility), located in St. Thomas, U.S. Virgin Islands. EPA issues this NOV pursuant to 42 U.S.C. §§ 7401 *et. seq.* (CAA or the Act), 42 U.S.C. § 7413(a)(1), § 113(a)(1) of the Act. The authority to find a violation and issue this NOV has been delegated to the Director from the EPA Administrator through the Regional Administrator.

Section 113(a)(1) of the Act requires that EPA notify both the person in violation and the State in which the violation occurred whenever EPA concludes a person violated a requirement of an applicable implementation plan.

Pursuant to § 161 of the Act, each applicable implementation plan must contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under Part C of Title I of the Act, to prevent significant deterioration of air quality in each region (or portion thereof) designated as “attainment” or “unclassifiable” pursuant to § 107 of the Act.

Under the authority of §§ 110, 114, 161, 165 and 166 of the Act, EPA promulgated the “Prevention of Significant Deterioration of Air Quality” regulations (PSD regulations), 40 C.F.R. § 52.21. The PSD regulations established preconstruction permitting and operating requirements for new major stationary sources and major modifications located in areas designated as “in attainment” with the national ambient air quality standards (NAAQS) promulgated under § 109 of the Act.

### **STATUTORY AND REGULATORY BACKGROUND**

1. Section 101(b)(1) of the Act provides that the Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

#### **A. The National Ambient Air Quality Standards**

2. Under § 107(d) of the Act, each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

IN THE MATTER OF:

Virgin Islands Water And Power Authority,  
St. Thomas, U.S. Virgin Islands

RESPONDENT

**Notice of Violation**

**CAA-02-2014-1303**

**STATUTORY AUTHORITY**

The United States Environmental Protection Agency (EPA) Region 2 Director of the Division of Enforcement and Compliance Assistance (Director) issues this **Notice of Violation (NOV)** to the Virgin Islands Water and Power Authority (Respondent or VIWAPA) for violations at the Krum Bay Generating Facility (St. Thomas Facility), located in St. Thomas, U.S. Virgin Islands. EPA issues this NOV pursuant to 42 U.S.C. §§ 7401 *et. seq.* (CAA or the Act), 42 U.S.C. § 7413(a)(1), § 113(a)(1) of the Act. The authority to find a violation and issue this NOV has been delegated to the Director from the EPA Administrator through the Regional Administrator.

Section 113(a)(1) of the Act requires that EPA notify both the person in violation and the State in which the violation occurred whenever EPA concludes a person violated a requirement of an applicable implementation plan.

CONCURRENCES

name: Leong	Init: DL	Date: 5/1/14	Filename: VIWAPA STTNOV							
Initial	ORC-AIR	ORC-ARC	DECA-ACB	DECA-ACB	DECA-ACB	DECA-ACB	DECA-ACB	DECA-DD	DECA-D	
Signature	Leong	Mills	Tu	Loneragan	Chiang	Mangels	LaVigna	Durack	LaPosta	
Date	5-2-14	5-2-14	5-6-14			5/6/14	5/6/14		5/7/14	5/6

Pursuant to § 161 of the Act, each applicable implementation plan must contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under Part C of Title I of the Act, to prevent significant deterioration of air quality in each region (or portion thereof) designated as “attainment” or “unclassifiable” pursuant to § 107 of the Act.

Under the authority of §§ 110, 114, 161, 165 and 166 of the Act, EPA promulgated the “Prevention of Significant Deterioration of Air Quality” regulations (PSD regulations), 40 C.F.R. § 52.21. The PSD regulations established preconstruction permitting and operating requirements for new major stationary sources and major modifications located in areas designated as “in attainment” with the national ambient air quality standards (NAAQS) promulgated under § 109 of the Act.

### **STATUTORY AND REGULATORY BACKGROUND**

1. Section 101(b)(1) of the Act provides that the Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

#### **A. The National Ambient Air Quality Standards**

2. Under § 107(d) of the Act, each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.

3. Section 107(d)(1)(A)(iii) provides that an area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.
4. Section 108(a)(1) of the Act requires the Administrator of EPA to identify and publish a list of each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources.
5. Section 108(a)(2) of the Act requires the Administrator of EPA to issue air quality criteria for each air pollutant listed pursuant to § 108(a)(1) of the Act.
6. Section 109 of the Act requires the EPA Administrator to promulgate regulations establishing primary and secondary NAAQS for those air pollutants (criteria pollutants) for which air quality criteria has been issued pursuant to § 108 of the Act.
7. Pursuant to § 109(b)(1), the primary NAAQS must contain an adequate margin of safety to protect the public health.
8. Pursuant to § 109(b)(2), the secondary NAAQS must protect the public welfare from any known or anticipated adverse effects associated with air pollutants in the ambient air.
9. Pursuant to §§ 108 and 109 of the Act, EPA promulgated the NAAQS at 40 C.F.R. Part 50.
10. 40 C.F.R. § 50.2(b) provides that: (1) the primary NAAQS define levels of air quality which the Administrator judges necessary, with an adequate margin of safety, to protect the public health; and (2) the secondary NAAQS define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant.

B. The Prevention of Significant Deterioration Program

11. Under the authority of §§ 110, 114, 161, 165 and 166 of the Act, EPA promulgated the PSD regulations to implement Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, entitled "Prevention of Significant Deterioration of Air Quality" provisions in the CAA.
12. Part C of Title I of the Act, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process.
13. EPA initially promulgated the PSD regulations on June 19, 1978 (43 Fed. Reg. 26402 (June 19, 1978)) and promulgated significant amendments to the PSD regulations on August 7, 1980 (45 Fed. Reg. 52741), and December 31, 2002 (67 Fed. Reg. 80186).
14. Section 165(a)(1) and (4) of the Act, among other things, prohibits the construction of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued for such proposed facility that conforms to the requirements of Part C of Title I of the Act and the facility is subject to BACT for each pollutant subject to regulation under the Act that is emitted from, or which results from, the facility.
15. To obtain a PSD permit, an applicant must, among other things, (1) conduct an ambient air quality analysis to demonstrate that its emissions would not violate either the NAAQS



or the PSD increments and (2) apply best available control technology (BACT). *See* Part C of Title I of the Act, 40 C.F.R. § 52.21, and NSR Workshop Manual, October 1990 Draft.

16. Section 169(1) of the Act defines “major emitting facility” as sources in specific categories (category sources) with the potential to emit 100 tons per year or more of any air pollutant and any other sources (non-category sources) with the potential to emit 250 tons per year or more of any air pollutant.
17. In accordance with §§ 110(a) and 161 of the Act, each State shall adopt and submit to EPA, for approval into the state implementation plan (SIP), a plan that contains emission limits and such other measures, as may be necessary, as determined under regulations promulgated under Subpart C of Title I of the Act, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to § 107 of the Act as attainment or unclassifiable. 40 C.F.R. § 52.21(a).
18. Section 302(d) of the Act defines the term “State” as a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the American Samoa and includes the Commonwealth of the Northern Mariana Islands.
19. Pursuant to 40 C.F.R. § 52.21(a), the PSD regulations are applicable in any State that has been disapproved with respect to its PSD plan. 40 C.F.R. Part 52, Subparts B-DDD provide the PSD provisions that EPA has approved and disapproved in various States, including the U.S. Virgin Islands. For provisions that have not been approved, 40 C.F.R. § 52.21(a), provides that the federal PSD regulations, with the exception of 40 C.F.R. § 52.21(a)(1), are incorporated by reference into the applicable implementation plans.

20. On June 19, 1978, pursuant to § 110 of the Act, EPA disapproved the U.S. Virgin Islands' PSD implementation plan submission. *See* 40 C.F.R. Subpart CCC, 40 C.F.R. §§ 52.2770-52.2782.
21. Thereafter, in accordance with 40 C.F.R. § 52.21(a)(1), the provisions of 40 C.F.R. § 52.21, except paragraph (a)(1), were incorporated and made part of the applicable Air Quality Implementation Plan (AQIP) for the U.S. Virgin Islands. *See* 40 C.F.R. §§ 52.2770-52.2782.
22. In addition, EPA has not delegated implementation of the federal PSD regulations to the Virgin Islands Department of Planning and Natural Resources (VIDPNR), and therefore, EPA administers the federal PSD program in the U.S. Virgin Islands.

#### C. Applicable PSD Regulations

23. 40 C.F.R. § 52.21(b)(1)(i)(a) and (b) defines "major stationary source" as any stationary source that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act for any source category listed in 40 C.F.R. § 52.21(b)(1)(i)(a) and any stationary source that emits or has the potential to emit 250 tons per year or more of any air pollutant subject to regulation under the Act at a non-listed source category.
24. 40 C.F.R. § 52.21(b)(1)(i)(c) defines "major stationary source" as any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of § 52.21 as a major stationary source, if the changes would constitute a major stationary source by itself.

25. 40 C.F.R. § 52.21(b)(5) defines “stationary source” as any building, structure, facility or installation that emits or may emit any pollutant subject to regulation under the Act.
26. 40 C.F.R. § 52.21(b)(4) defines “potential to emit” as “the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.”
27. Pursuant to 40 C.F.R. § 52.21(d), no concentration of a pollutant shall exceed the concentration permitted under the primary or secondary NAAQS.
28. Pursuant to 40 C.F.R. § 52.21(i)(1), no stationary source to which the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply shall begin actual construction without a permit that states the stationary source will meet those requirements.
29. Pursuant to 40 C.F.R. § 52.21(i)(2), the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit except as § 52.21 otherwise provides.
30. Pursuant to 40 C.F.R. § 52.21(i)(3), the requirements of paragraphs (j) - (r) of 40 C.F.R. § 52.21 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under § 107(d)(1)(D) or (E) of the Act.

31. Pursuant to 40 C.F.R. § 52.21(r)(1), any owner or operator who constructs or operates a source or modification not in accordance with an application submitted pursuant to the PSD regulations or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the PSD regulations who commences construction after the effective date of the PSD regulations without applying for and receiving approval thereunder, is subject to appropriate enforcement action. *See also*, 40 C.F.R. § 52.21(b)(8), (9) and (11).
32. Pursuant to 40 C.F.R. § 52.23, failure to comply with any condition in a permit issued pursuant to approved or promulgated regulations for the review of, among other things, new stationary sources shall be subject to EPA enforcement action under § 113 of the Act.

#### D. SIP Opacity Rule

33. The Virgin Islands Laws and Rules and Regulations on Air Pollution Control (VI-APCR&R) Title 12, Chapter 9, Section 204-22(a) and (b) (VI SIP Opacity Rule) provide that no person shall discharge into the atmosphere, from any stationary source, any air contaminant(s) with opacity equal to or greater than twenty percent (20%) for any time period; however, the Permittee's fuel burning equipment may discharge into the atmosphere any air contaminant(s) with opacity equal to or less than forty percent (40%) for a period or periods aggregating not more than three (3) minutes in any thirty (30) minutes.

34. Pursuant to § 110(k) of the Act, EPA approved VI-APCR&R, Title 12, Chapter 9, Section 204-22(a) and (b) into the SIP on April 18, 1994. 59 Fed. Reg. 18309 (Apr. 18, 1994).

E. Title V Operating Permit Violations

35. The VI SIP Opacity Rule and PM10 and VOC emission limits, alleged in this NOV to be violated, are applicable requirements included in the Facility's Title V Operating Permit (STT-TV-003-03), which the VIDPNR issued to the Facility in December 2003 pursuant to Title V of the Act and the VI-APCR&R Title 12, Chapter 9 (VI Title V Operating Permit Program).
36. Notice of Violations of a Title V Operating Permit are not required pursuant to § 113(a)(1) of the Act. However, as a courtesy, EPA includes footnotes in the Conclusions of Law and Findings of Violations section of this NOV that provide the specific conditions in the Title V Operating Permit that include the VI SIP Opacity Rule and PM10 and VOC emission limits as applicable requirements. Violations of the VI SIP Opacity Rule, PM10 and VOC emission limits are therefore also violations of the Title V Operating Permit, Title V of the Act and the VI Title V Operating Permit Program.

**FINDINGS OF FACT**

37. Respondent owns and operates six oil-fired gas turbines. Units 12,<sup>1</sup> 14,<sup>2</sup> 15, 18, 22 and 23 at the St. Thomas Facility.

---

<sup>1</sup> Unit 12 was installed in 1970 and is therefore not subject to PSD regulations.

<sup>2</sup> Unit 14 was installed in 1972 and is therefore not subject to PSD regulations.

38. Respondent owns and operates an unfired heat recovery steam generating unit, HRSG Unit 21 (hereinafter HRSG), that is used in conjunction with Units 15 and 18 at the St. Thomas Facility.
39. On February 11, 1992, EPA issued Respondent a PSD permit (1992 PSD Permit), pursuant to § 165(a) of the Act and 40 C.F.R. § 52.21, for the operation of Units 15 and 18 and the HRSG at the St. Thomas Facility, which was modified on August 24, 1994.
40. On January 3, 2001, EPA issued Respondent a PSD permit (2001 PSD Permit), pursuant to § 165(a) of the Act and 40 C.F.R. § 52.21, for the operation of Unit 22 at the St. Thomas Facility.
41. On September 8, 2004, EPA issued Respondent a PSD permit (Unit 23 PSD Permit), pursuant to § 165(a) of the Act and 40 C.F.R. § 52.21, for the operation of Unit 23 at the St. Thomas Facility.
42. EPA consolidated the St. Thomas Facility PSD permits for Units 15, 18 and 22 into one permit (St. Thomas Consolidated PSD Permit) on February 20, 2007 and modified it on June 18, 2007.
43. The St. Thomas Consolidated PSD Permits for Units 15, 18, 22 and the HRSG, and the Unit 23 PSD Permit provide emission limits for, among other things, sulfuric acid mist, PM 10, volatile organic compounds (VOCs) that are applicable during the operation of the oil-fired gas turbines.
44. As stated in paragraph 34, on April 18, 1994, EPA approved the VI SIP Opacity Rule into the VI SIP.

50. On March 8, 2011, VIWAPA submitted, to EPA for review, a document entitled "Emission, Monitor Performance Specification and RATA Test Protocol" (RATA Protocol) for Units 15, 18, 22, 23 and HRSG at the St. Thomas Facility.
51. On July 7, 2011, EPA conditionally approved VIWAPA's Protocol for conducting stack testing on specified units and approved VIWAPA's RATA Protocol for conducting RATAs on all CEMS associated with those units.
52. On July 27, 2012, EPA received a revision to the Protocol from VIWAPA. It added Units 23 and 25 for testing and it also included the testing for pollutant sulfuric acid mist.
53. On August 24, 2012, EPA received an addendum to the July 27, 2012 stack testing Protocol, which clarifies testing procedures for sulfuric acid mist.
54. On September 13, 2012, EPA approved the addendum to the Stack Testing Protocol.
55. On October 20, 2012, October 25, 2012 and November 9, 2012, at Unit 14 on the St. Thomas Facility, VIWAPA conducted VE observations, in accordance with Method 9.
56. VIWAPA's submittal, dated April 30, 2013, indicates that, on October 20, 2012, October 25, 2012 and November 9, 2012, VIWAPA observed for greater than 3 (three) minutes of all 30 (thirty) minute periods in which testing was being conducted, plumes associated with Unit 14 with opacity equal to or greater than twenty percent (20%).
57. On November 1, 2012, VIWAPA conducted sulfuric acid mist stack tests on Unit 23 in accordance with the conditionally approved Protocol.
58. VIWAPA's submittal, dated April 30, 2013, indicates the results of the three one-hour stack tests conducted on November 1, 2012, from which EPA determined average sulfuric acid mist emissions of 10.6 pounds for Unit 23.

45. Enclosure II, Section I.B.2 of the Unit 23 PSD Permit provides that sulfuric acid mist emissions at Unit 23 shall not exceed 7.5 pounds per hour.
46. Enclosure II, Section I.B.7.b for the Units 15 and 18 of the St. Thomas Consolidated PSD Permit provides that the PM 10 emissions at Unit 18 shall not exceed 5.0 pounds per hour.
47. Enclosure II, Section I.B.8.b for Units 15 and 18 of the St. Thomas Consolidated PSD Permit provides that while operating at 75-99 percent load, the VOC emissions at Unit 18 shall not exceed 4.3 pounds per hour.
48. On January 19, 2011, pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, EPA issued VIWAPA a request for information requiring VIWAPA to submit protocols for conducting stack testing at the St. Thomas Facility of all specified units and to submit protocols for conducting Relative Accuracy Test Audits (RATAs) on all CEMS associated with those units. The request also required that stack tests and RATAs be conducted pursuant to EPA-approved protocols and that VIWAPA conduct 40 C.F.R. Part 60, Appendix A, Method 9 (Method 9), visible emission observation (VE observation) at all specified units and, among other things, at Units 12 and 14.
49. On January 12, 2011, VIWAPA submitted, to EPA for review, stack testing protocol (Protocol). The Protocol includes specific procedures for testing pollutant emissions including Opacity, PM10 and VOCs for Units 15, 18, 22 and HRSG at St. Thomas Facility.



59. In December 2, 2012, VIWAPA conducted PM 10 stack tests at Unit 18 in accordance with the conditionally approved Protocol.
60. VIWAPA's submittal, dated April 30, 2013, indicates the results of the three one-hour stack tests conducted on December 2, 2012, from which EPA determined average PM 10 emissions of 7.0 pounds at Unit 18.
61. On December 2, 2012, VIWAPA conducted VOC stack tests at Unit 18 in accordance with the conditionally approved Protocol.
62. VIWAPA's submittal, dated April 30, 2013, indicates the results of the three one-hour stack tests conducted December 2, 2012, from which EPA determined VOC emissions of 5.4 pounds when Unit 18 operated between 75-99 percent load.
63. VIWAPA did not conduct stack tests for Unit 22 because the unit has not been in operation since October 2011.

#### **CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS**

64. Paragraphs 1-63 are re-alleged and incorporated herein by reference.
65. From the Findings of Fact set forth above, EPA finds that Respondent is the owner and/or operator of Units 14, 15, 18, 22 and 23 and the HRSG at the St. Thomas Facility.
66. From the Findings of Fact set forth above, EPA finds that Units 15, 18, 22 and 23 are four (4) oil-fired gas turbines subject to PSD regulations. *See* 40 C.F.R. § 52.21.
67. At all relevant times to this NOV, the Title V Operating Permit, the St. Thomas Consolidated PSD Permit and/or the Unit 23 PSD Permit allowed the St. Thomas Facility, among other things, to operate the following five oil-fired gas turbines: (1) Unit 14; (2) Unit 15; (3) Unit 18; (4) Unit 22; and (5) Unit 23.

68. From the Findings of Fact set forth above, EPA finds that, at Unit 14, VIWAPA exceeded the limit in its SIP Opacity Rule during stack testing in violation of Section 204-22(a) and (b) of the VI-APCR&R Title 12, Chapter 9.<sup>3</sup>
69. From the Findings of Fact set forth above, EPA finds that, during stack testing, VIWAPA exceeded its sulfuric acid mist emission limit for Unit 23 in violation of Enclosure II, Section I.B.2 of the Unit 23 PSD Permit.
70. From the Findings of Fact set forth above, EPA finds that, during stack testing, VIWAPA exceeded its PM 10 emission limit for Unit 18 in violation of Enclosure II, Section I.B.7.b of the St. Thomas Consolidated PSD Permit.<sup>4</sup>
71. From the Findings of Fact set forth above, EPA finds that, during stack testing, VIWAPA exceeded its VOC emission limit for Unit 18 in violation of Enclosure II, Section I.B.8.b for Units 15 and 18 of the St. Thomas Consolidated PSD Permit.<sup>5</sup>

### **ENFORCEMENT**

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation(s) of the Act:

- issue an administrative penalty order, for penalties up to \$25,000 per day pursuant to § 113(d) of the Act and adjust the maximum penalty provided by the Act up to \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004, \$32,500 per day for each violation that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation that

---

<sup>3</sup> Condition 3.3.1 of the St. Thomas Title V Operating Permit provides that any stationary source shall not discharge into the atmosphere, from any stationary source, any air contaminant(s) with opacity equal to or greater than twenty percent (20%) for any time period; however, the VIWAPA's fuel burning equipment may discharge into the atmosphere any air contaminant(s) with opacity equal to or less than forty percent (40%) for a period or periods aggregating not more than three (3) minutes in any thirty (30) minutes.

<sup>4</sup> Condition 3.2.12 of the St. Thomas Title V Operating Permit provides that PM 10 emissions at Unit 18 shall not exceed 5.0 pounds per hour.

<sup>5</sup> Condition 3.2.13 of the St. Thomas Title V Operating Permit provides that while operating at 75-99 percent load, the VOC emissions at Unit 18 shall not exceed 4.3 pounds per hour.

occurs after January 12, 2009, in accordance with the Debt Collection Improvement Act, 31 U.S.C. 3701 et seq. (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to the DCIA;

- issue an order requiring such person to comply with a requirement of the Act with which EPA has determined the respondent to be in violation; and
- bring a civil action pursuant to § 113(b) of the Act for injunctive relief and/or civil penalties, in accordance with § 113(d) of the Act, and in accordance with the DCIA and Part 19.

Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable implementation plan for more than thirty (30) days after the date of the issuance of a NOV, § 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under § 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

#### **PENALTY ASSESSMENT CRITERIA**

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to §§ 113 or 304(a) of the Act, the Administrator or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the court, as appropriate, to assess a penalty for each day of violation. In accordance with § 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

#### **OPPORTUNITY FOR CONFERENCE**

Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence bearing on the findings of violation, on the nature of the violation, and on any efforts Respondent may have taken or may propose to take to achieve compliance. Respondent may arrange to be represented by legal counsel.

Respondent's request for a conference must be confirmed in writing within twenty-one (21) calendar days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made to:

Denise Leong  
Assistant Regional Counsel  
Office of Regional Counsel - Air Branch  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 16th Floor  
New York, NY 10007-1866  
(212) 637-3214

Notwithstanding the effective date of this NOV and opportunity for a conference discussed above, Respondent must comply with all applicable requirements of the Act.

Issued: May 7, 2014

Dore LaPosta, Director  
Division of Enforcement & Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

To: Hugo Hodge, Jr., Executive Director  
Virgin Islands Water and Power Authority  
P.O. Box 1450  
St. Thomas, USVI 00804-1450

cc: Magdalene Morancie, Acting DEP Director  
Division of Environmental Protection  
Virgin Islands Department of Planning and Natural Resources  
Cyril E. King Airport, 2nd Floor  
St. Thomas, USVI 00802

Legal Counsel, Division of Environmental Protection  
Virgin Islands Department of Planning and Natural Resources  
#45 Mars Hill, Frederiksted  
St. Croix, USVI 00840

Robert G. Smith, Esq.  
Robert G Smith Law  
20 Halston Court, Suite 200  
Baltimore, MD 21209



bcc:

D. Leong, ORC-AB  
F. Mills, ORC-ARC  
J. Chiang, DECA-ACB  
V. Tu, DECA-ACB  
R. Lonergan, DECA-ACB  
K. Mangels, DECA-ACB  
G. LaVigna, DECA-ACB  
T. Rodriquez, CEPD-DD  
ORC-AB Chron File  
DECA ACB Source File

